IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9064 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHD SAFI NOORMOHMAD GULAM KADAR SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 21st August, 1999, made against him by the District Magistrate, Bharuch, under the powers

conferred upon him under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It appears that the Detaining Authority before making the order of detention has considered the factum of three offences registered against the petitioner and the statements made by three persons in respect of the anti-social activities of the petitioner and its adverse effect on the public tranquility and the even tempo of the life. It is, therefore, held that the petitioner is a 'dangerous person, within the meaning of section 2 (c) of the Act, and his activities are prejudicial to the maintenance of public order.

It is contended that unless a person is found to be habituated in committing offence punishable under Chapters-XVI & XVII of the IPC and Chapter-V of the Arms Act, he can not be said to be a 'dangerous person' within the meaning of section 2 (c) of the Act. The commission of any offence punishable under any other penal statute can not be taken into consideration for holding a person to be a 'dangerous person'. However, in the present case, the offence punishable under section 135 of the Bombay Police Act has been considered by the Detaining Authority while holding the petitioner to be a 'dangerous person'. The subjective satisfaction recorded by the Detaining Authority is, thus, vitiated for non-application of mind. Further, it is contended that all the relevant materials have not been taken into consideration, that is to say, that one Police Sub Inspector Shri Chaudhari had been harassing the petitioner for a long time, for which the mother of the petitioner had, on 8th March, 1999, lodged a complaint with several authorities including the Detaining Authority. The said complaint and the contents thereof would be the relevant material, which the Detaining Authority has failed to take into consideration. Besides, the petitioner, through his advocate, made an application on 1st November, 1999, and drew the attention of the Detaining Authority to the aforesaid complaint dated 8th March, 1999. The petitioner had also demanded certain documents which according to the petitioner were essential for making an effective representation. It is submitted that the said application was delivered in the office of the Detaining Authority on 5th November 1999. Neither the petitioner has been furnished the relevant documents nor the said application has been attended to. The averments are not denied. It does appear that while making the order of detention, the Detaining Authority has taken into consideration not only those offences

which are punishable in Chapters-XVI & XVII of the IPC, but also the offence which is punishable under section 135 of the Bombay Police Act. Obviously, the person committing offence under the Bombay Police Act, can not be said to be a 'dangerous person' within the meaning of section 2 (c) of the Act. Such an offence ought not to have been considered by the Detaining Authority. Hence, it is required to be held that the subjective satisfaction recorded by the Detaining Authority has been based on irrelevant material. Besides, it was the duty of the Detaining Authority to attend to the application made by the petitioner. It is not denied that the aforesaid application was received by the Detaining Authority on 5th November, 1999 as alleged. Neither it is denied that the complaint referred to in the petition was not made on 8th March, 1999, nor it is born out whether such complaint was considered by the Detaining Authority or not. Thus, it is apparent that the subjective satisfaction has been recorded on irrelevant material and and the relevant and the vital materials have not been taken into consideration. Whether the documents demanded by the petitioner were relevant or not, is also not considered, nor his application has been replied to. The order of detention is, therefore, clearly vitiated for non-application of mind to the relevant and vital documents.

Petition is allowed. The impugned order dated 21st August, 1999 is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI